



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/957,709 10/24/97 HOGREFE

H 1486/41363CP

EXAMINER

HM22/0301

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HOUTTEMAN, S

ART UNIT

PAPER NUMBER

1656

DATE MAILED:

03/01/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Advisory Action

Application No.

08/957,709

Applicant(s)

Hogrefe et al.

Examiner

Scott Houtteman

Group Art Unit

1656



THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☐ expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due two months from the date of the Notice of Appeal filed on May 23, 2000 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Aug 22, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☒ The proposed amendment(s):

- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☒ will not be entered because:
- ☒ they raise new issues that would require further consideration and/or search. (See note below).
- ☒ they raise the issue of new matter. (See note below).
- ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: 5 issues: PEF indefinite, "DNA hybridization" limitation on protein structure, indefinite "analogs" clause, scope beyond P. furious not enabled and Sorge et al. prior art rejection

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☐ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.


- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: NONE

Claims objected to: \_\_\_\_\_

Claims rejected: 1-23, 30-39, 45, 46, 59-66, 77-80, 85, 87-92, 95, and 96

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Other

  
SCOTT W. HOUTTEMAN  
PRIMARY EXAMINER

# Defective Notice of Appeal or Brief

Application No.  
08/957,709

Applicant(s)  
Hogrefe et al.

Examiner  
Scott Houtteman

Group Art Unit  
1656



☐ The Notice of Appeal filed on \_\_\_\_\_ is:

☐ not acceptable because:

☐ it was not timely filed.

☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 1.17(b).

☐ the appeal fee received on \_\_\_\_\_ was not timely filed.

☐ the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 1.17(b) is \$\_\_\_\_\_.

☐ the appeal is not in compliance with 37 CFR 1.191 in that there is no record of a second or a final rejection in this application.

☐ a Notice of Allowability, form PTO-37, was mailed by the Office on \_\_\_\_\_.

☐ The appeal brief filed on \_\_\_\_\_ is NOT acceptable for the reason(s) indicated below:

☐ The brief and/or brief fee is untimely. See 37 CFR 1.192.

☐ The statutory fee for filing the brief has not been submitted. See 37 CFR 1.17(c).

☐ The submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 1.17(c) is \$\_\_\_\_\_.

**The appeal in this application will be dismissed unless corrective action is taken. Extensions of time may be obtained under 37 CFR 1.136(a).**

☒ The appeal in this application is DISMISSED because:

☐ The fee for filing the brief as required under 37 CFR 1.17(c) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.

☒ The brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136 has expired.

☒ Because of the dismissal of the appeal, this application:

☒ is abandoned because there are no allowed claims.

☐ is being returned to the examiner for final disposition because it contains allowed claims. Prosecution on the merits is CLOSED.

SCOTT W. HOUTTEMAN  
PRIMARY EXAMINER